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OFFICE OF PETITIONS

In re Reissue Application of :
Takeshi YUKITAKE, et al :
Application No. 09/833,769 : DECISION GRANTING PETITION
Filed: April 13, 2001 : UNDER 37 CFR 1.137(b)
Based on Patent No. 5,745,182 :
Issue Date: April 28, 1998 :
Attorney Docket No. JEL29186C-RE- :
DIV3 :

This is a decision on the petition, filed August 3, 2006, to revive the above-identified application under the unintentional provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

A review of the file record discloses that a final Office action was mailed on **August 25, 2004**, which set a shortened statutory period for reply of three (3) months, with extensions of time being available up to and including **February 25, 2005**. On September 13, 2004, in response to the final Office action, applicant submitted an amendment and supplemental reissue declaration on September 13, 2004. However, in an Interview Summary Record dated June 9, 2005, the examiner stated that "the declaration filed on September 13, 2004 is defective due to the error statement which fails to be in compliance with MPEP 1414" and went on to point out the specific defects in the amendment to claim 2 and supplemental reissue declaration. On August 12, 2005, an amendment and supplemental reissue declaration were received. Thereafter, on December 9, 2005, a Notice of Allowability and Notice of Allowance and Fee(s) Due were mailed. The issue fee was timely paid on January 17, 2006.

At the time of the examiner interview on June 9, 2005 and the subsequent submission of an amendment and supplemental reissue declaration on August 12, 2005, the maximum shortened statutory period for reply had already expired. Therefore, since a proper


and timely reply placing the application in condition for allowance had not been filed prior to expiration of the maximum shortened statutory period set and no extensions of time pursuant to the provisions of 37 CFR 1.136(a) were received, the date of abandonment of this application is November 27, 2004 (November 25, 2004, the due date, was a holiday).

An examiner has no procedural authority with respect to an abandoned application. Lorenz v. Finkl, 333 F.2d 885, 891 142 USPQ 26, 30 (CCPA 1964). While it is unfortunate that, notwithstanding the lack of a proper and timely reply to the outstanding Office action, the examiner subsequently issued a Notice of Allowability and a Notice of Allowance, such actions by the examiner were performed without proper authority, and thus, had no force and effect. The examiner has no authority to revive an abandoned application. Id. The examiner's indication of patentable subject matter in an abandoned application will not have the effect of saving that application from abandonment. Lorenz v. Finkl, supra. Therefore, the subsequent mailing on December 9, 2005 of a Notice of Allowability and Notice of Allowance and Fee(s) Due was improper in view of the abandoned status of this application. Nevertheless, in view of the granting of the petition to revive this application, as set forth below, the examiner's action in the mailing of the Notices of December 9, 2005 is hereby ratified.

The petition satisfies the requirements for revival under the provisions of 37 CFR 1.137(b). Accordingly, the belated filing of a proper and timely reply to the final Office action of August 25, 2004 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

As noted above, the issue fee has been paid. Accordingly, this application will be referred to Publishing Division for processing into a patent.


Frances Hicks
Petitions Examiner
Office of Petitions